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In The

Supreme Court of the United States

October Term, 1989

PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, ET AL.,

Petitioners,

v.

EDWARD J. DAVENPORT, ET UX.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF OF ALABAMA, ARIZONA, CALIFORNIA, CONNECTICUT, DELAWARE, FLORIDA, IDAHO, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MAINE, MASSACHUSETTS, MARYLAND, MICHIGAN, MINNESOTA, MISSOURI, MONTANA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, NORTH DAKOTA, OHIO, OREGON, PUERTO RICO, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, VERMONT, VIRGINIA, VIRGIN ISLANDS, AND WYOMING* AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONERS

INTEREST OF AMICI CURIAE

Amici curiae are States, each of which administers a criminal justice system within its borders, and each of which views the decision of the Third Circuit Court of Appeals in this case as a serious threat to the criminal justice system of the states and of the entire country. It is the belief of amici curiae that the case not only is wrongly decided as to criminal restitution orders, but it will be interpreted as a holding that criminal fines and other monetary criminal penalties, in addition to restitution orders, are dischargeable as "debts" in a Chapter 13

bankruptcy. If that is the case, the federal bankruptcy courts will be in a position to interfere with state court imposed criminal sanctions to an even greater degree than was considered inappropriate in *Kelly v. Robinson*, 479 U.S. 36, 47-49 (1986). If criminal restitution orders, criminal fines and other monetary criminal sanctions are all dischargeable in a Chapter 13 bankruptcy, incarceration will become the only effective measure available to criminal courts to punish and rehabilitate convicted offenders.

The decision of the Third Circuit Court of Appeals fails to recognize the important function that such monetary criminal sanctions serve in carrying out penal goals of deterrence, prevention, rehabilitation and proportional justice. If its decision is upheld, amici curiae will be deprived of the flexibility to use the best available penal sanctions to fit the crime and will be forced to use incarceration when that sanction would otherwise be unnecessary. Moreover, the Third Circuit's decision flies in the face of this Court's longstanding policy, based on principles of federalism and comity, against federal court interference with state criminal prosecutions. It also ignores the established principle that federal bankruptcy laws are designed to relieve honest debtors of their civil obligations, not to impede the authority of the States, or any other governmental entity, to enforce the criminal laws.

In essence, amici curiae believe, as Judge Shapiro stated in the District Court decision which was reversed in this case, that:

> It is essential that state courts are able to impose penal sanctions other than incarceration without fear that a federal court will render this punishment nugatory after the fact.

Davenport v. Com. of Pa., Dept. of Public Welfare, 89 B.R. 428, 430 (E.D. Pa. 1988). Because State courts will be denied this ability under the reasoning of the decision below, amici curiae support the Commonwealth of Pennsylvania is urging this Court to reverse that decision.

STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

This is a case of statutory construction. The Third Circuit's interpretation of the term "debt" in this case is based on the text of the Bankruptcy Code and has a superficial logic, but it ignores a myriad of reasons why such a literal construction should not be applied, reasons which were laid out quite clearly by this Court in *Kelly v. Robinson*, 479 U.S. 36 (1986).

In fact, the Third Circuit's decision turns this Court's decision in *Kelly* on its head. In effect, the Third Circuit has held that *Kelly* stands for the proposition that criminal penalties are "debts" for purposes of the Bankruptcy Code. Based on that interpretation of *Kelly*, the court incorporates expansive language indicating that all criminal sanctions, not just restitution orders, are dischargeable debts in a Chapter 13 bankruptcy. Only the dissent by Judge Hutchinson below points out that this Court, in *Kelly*, indicated that "policy considerations and history transcend the logic of textual analysis" in deciding whether criminal penalties should be considered "debts" under the Bankruptcy Code. *In re Johnson-Allen*, 871 F.2d 421, 431 (3rd Cir. 1989) (Hutchinson, J., dissenting).

Judge Hutchinson's view of *Kelly* is accurate. In *Kelly*, this Court began its analysis by stating that the text is only the starting point in construing a statute:

> In this case, we must consider the language of §§ 101 and 523 in light of the history of bankruptcy court deference to criminal judgments and in light of the interests of the States in unfettered administration of their criminal justice systems.

479 U.S. at 43-44. The Court then outlined the policy reasons why the term "debt" should not be construed to include criminal penalties, concluding with the statement that "we have serious doubts whether Congress intended to make criminal penalties 'debts' within the meaning of § 101(4)." 479 U.S. at 50.

The formidable policy considerations expressed by the majority in *Kelly* apply with equal force to this case. They may, in fact, be even more important in this case, because the efficacy of all monetary criminal sanctions, not just restitution orders, may hang in the balance. The potential for the bankruptcy courts to interfere with state criminal court judgments if this case is affirmed is even greater than this Court envisioned when the *Kelly* opinion was written.

ARGUMENT

I. THE TEXTUAL CONSTRUCTION OF THE TERM "DEBT" BY THE COURT BELOW IGNORES THE TEACHING OF *KELLY v. ROBINSON* AND TURNS *KELLY* ON ITS HEAD.

This Court considered whether criminal penalties were "debts" for purposes of the Bankruptcy Code in

Kelly v. Robinson, 479 U.S. 36 (1986). There the Court began its analysis by stating that:

> [T]he "starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J. concurring). But the text is only the starting point. As Justice O'Connor explained last Term, " ' "In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." ' " *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 222 (1986) (quoting *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 285 (1956) (in turn quoting *United States v. Heirs of Boisdore*, 8 How 113, 122 (1849). In this case, we must consider the language of §§ 101 and 523 in light of the history of bankruptcy court deference to criminal judgments and in light of the interests of the States in unfettered administration of their criminal justice systems.

479 U.S. at 43-44.

The Court then described the historical development of the judicially created exception to discharge for criminal penalties under the Bankruptcy Act, the policy considerations which led to the creation of that exception, and the lack of anything in the legislative history to indicate that Congress intended to eliminate that judicially created concept when it enacted the Bankruptcy Code in 1978. 479 U.S. at 43-50.[1] All of that discussion

[1] The Court quotes from *Midlantic National Bank v. New Jersey Dept. of Environmental Protection*, 474 U.S. 494, 501 (1986) with regard to statutory construction in this context:

(Continued on following page)

was by way of construing the term "debt" such that it would not conflict with the judicially created exception to discharge for criminal penalties, a construction which this Court stopped just short of adopting as its holding, stating instead that:

> In light of the established state of the law – that bankruptcy courts could not discharge criminal judgments – we have serious doubts whether Congress intended to make criminal penalties "debts" within the meaning of § 101(4). But we need not address that question in this case, because we hold that § 523(a)(7) preserves from discharge any condition a state criminal court imposes as part of a criminal sentence.

479 U.S. at 50.

The Third Circuit's decision in this case ignores the teaching of *Kelly* that the term "debt" must be interpreted in light of the history of bankruptcy court deference to criminal judgments and in light of the interests of the States in unfettered administration of their criminal

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> "the normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific. The Court has followed this rule with particular care in construing the scope of bankruptcy codifications. If Congress wishes to grant the trustee an extraordinary exemption from non-bankruptcy law, 'the intention would be clearly expressed, not left to be collected or inferred from disputable considerations of convenience in administering the estate of the bankrupt.' "

479 U.S. at 47 (citations omitted).

justice systems. In fact, it turns the *Kelly* decision on its head by focusing instead on the view of the dissent in *Kelly* that the majority's holding that § 523(a)(7) preserves restitution orders from discharge in a Chapter 7 bankruptcy, "compels the conclusion that restitution is a debt." 871 F.2d at 426.

In discussing Justice Marshall's dissent in *Kelly*, the Third Circuit states:

> Noting that only debts are subject to discharge under the Code, Justice Marshall reasoned that *if restitution orders and other criminal penalties were not debts*, there would be no need to except them from discharge under Chapter 7. *Kelly*, 479 U.S. at 58. We find this reasoning persuasive and conclude that Congress must have recognized that such obligations were debts within the meaning of the Code. *See Kelly*, 479 U.S. at 58 (dissent); *In re Heincy*, 78 B.R. at 248; *In re Cullens*, 77 B.R. at 828.

The Court's analysis in *Kelly* also provides as apt response to the argument that criminal restitution is not a debt when such restitution is ordered primarily to rehabilitate the offender rather than to compensate the victim. As the Court held, section 523(a)(7) excepts from discharge criminal restitution precisely because that penalty is imposed primarily for punitive and rehabilitative purposes, and only incidentally for purposes of compensating the victim. The statutory exception to discharge logically leads to the conclusion not only that criminal restitution orders are debts under the Code but also that such penalties are debts despite the underlying motivations of punishment and rehabilitation. Therefore, we hold that restitution obligations constitute debts even when the state's primary objectives in imposing such

obligations are to rehabilitate and to punish the offender, rather than to compensate the victim.

871 F.2d at 426-427 (emphasis added).

Thus, the Third Circuit has held that this Court's decision in *Kelly* was, in effect, a holding that criminal penalties are debts, even though the majority in *Kelly* stated that it was not deciding that issue, and gave ample indication that had it decided the issue it would have held them *not* to be debts.[2]

II. THE DICTA IN *KELLY* SHOULD BE ADOPTED AS THE HOLDING IN THIS CASE BECAUSE IT PROVIDES THE ONLY REASONABLE WAY TO ACCOMMODATE THE NEEDS OF THE CRIMINAL JUSTICE SYSTEM, ESTABLISHED PRINCIPLES OF FEDERALISM, AND THE POLICIES OF THE BANKRUPTCY CODE.

Amici curiae do not contend that this case is on all fours with *Kelly*. On the issues of whether criminal penalties should be considered dischargeable debts in a bankruptcy proceeding, and whether the term "debt" should be interpreted in light of the judicially created exception

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[2] As Judge Hutchinson noted below:

> The Kelly Court, however, was surely aware of [Judge Marshall's dissenting] argument. Its grave doubts as to whether criminal penalties are debts in the face of the dissent's reasoning indicates to me that restitution orders imposed as part of criminal sentences are not debts, despite the language of § 523(a)(7).

871 F.2d at 430 (Hutchinson, J., dissenting).

from such discharge, however, the cases are nearly identical. The policies which led to the creation of that judicial exception, and the fact that Congress gave no indication that it intended to eliminate that exception when it enacted the Bankruptcy Code, have not changed since 1986. Indeed, the only real difference between this case and *Kelly* is that, if the judicially created exception to discharge for criminal penalties is to survive in a Chapter 13 bankruptcy, this Court has no alternative but to take the step suggested by *Kelly* and hold that a criminal penalty is not a "debt."

Such a step is not only logical but is fully supported for all the reasons this Court pointed out in *Kelly*, albeit in dicta. Such a holding would satisfy all of the competing interests at stake. It would satisfy the "States' interest in administering their criminal justice systems free of federal interference." 479 U.S. at 49. It would maintain the principles of federalism and comity implicit in cases such as *Younger v. Harris*, 401 U.S. 37 (1971). *See Kelly*, 479 U.S. at 47. It would permit state court judges the flexibility to choose appropriate criminal sanctions. *See Kelly*, 479 U.S. at 49. And it would be consistent with bankruptcy policies of relieving *honest* debtors from the weight of oppressive economic burdens, *Local Loan Co. v. Hunt*, 292 U.S. 234 (1934), while providing no haven for criminal offenders. *See Perez v. Campbell*, 402 U.S. 637 (1971).

Conversely, if this Court affirms the court below, it will thrust the bankruptcy courts into perpetual conflict with criminal courts and the criminal justice system, thereby violating or conflicting with virtually every policy interest at stake here. Under such a holding, the

federal bankruptcy courts will be in a position to invalidate state criminal court sentences, violating " 'the fundamental policy against federal interference with state criminal prosecutions.' "[3] *Kelly*, 479 U.S. at 47, *quoting Younger v. Harris*, 401 U.S. at 46. State (and federal) criminal courts will be denied the flexibility to fashion appropriate sentences for fear that the bankruptcy courts would render much of them nugatory. *See Kelly*, 479 U.S. at 49. It will provide criminals with precisely the haven in bankruptcy that Congress and the Courts have stated is contrary to the policies of the Bankruptcy Code. *See In re Pellegrino*, 42 B.R. 129, 134 (Bkrtcy. D. Conn. 1984).

This Court considered these interests in *Kelly* and emphasized their importance. They are even more important in this case because the Third Circuit majority, in effect, has held that *all* monetary criminal penalties are dischargeable debts in Chapter 13 bankruptcy, whereas the *Kelly* decision itself focused on the more narrow issue of dischargeability of restitution orders. *See infra*, page 12.

As Judge Hutchinson states in his dissent in the court below:

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[3] As this Court noted in *Engle v. Isaac*, 456 U.S. 107, 128 (1982), "[t]he States possess primary authority for defining and enforcing the criminal law," and "[f]ederal intrusions into state criminal trials frustrate . . . the States' sovereign power to punish offenders."

> The interpretation . . . [of] the majority . . . is "in clear conflict with state . . . laws of great importance." *United States v. Ron Pair Enterprises, Inc.*, ___ U.S. ___, ___, 109 S.Ct. 1026, 1033, (1989).
>
> * * *
>
> The judicially created exception [for criminal penalties from discharge in bankruptcy] "reflect[s] policy considerations of great longevity and importance." *Ron Pair Enterprises, Inc.*, ___ U.S. at ___, 109 S. Ct. at 1032. The majority opinion notes that the literal terms of the Code may support the discharge of criminal judgments, but that was also true under the Bankruptcy Act of 1898. The Supreme Court has indicated to me [in *Kelly v. Robinson*] that the policy considerations and history transcend the logic of a textual analysis.

871 F.2d at 431 (Hutchinson, J., dissenting).

This Court's construction of the statute should be guided, as it was in *Kelly*, by the thoughts of Justice Frankfurter:

> "The task is one of accommodation as between assertions of new federal authority and historic functions of the individual states. Federal legislation of this character cannot therefore be construed without regard to the implications of our dual system of government. . . . The underlying assumptions of our dual form of government, and the consequent presuppositions of legislative draftsmanship which are expressive of our history and habits, cut across what might otherwise be the implied range of legislation. The history of congressional legislation . . . justif[ies] the generalization that, when the Federal Government takes over such local radiations in the vast network of our national economic enterprise and thereby radically readjusts the balance of state and national authority, those charged

with the duty of legislating are reasonably explicit."

479 U.S. at 50, N.11, *quoting* Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 539-540 (1947).

III. BECAUSE THE DECISION BELOW HOLDS THAT CRIMINAL FINES, PENALTIES AND FORFEITURES ARE DISCHARGEABLE DEBTS, IT WILL HAVE A SIGNIFICANT ADVERSE IMPACT ON THE CRIMINAL JUSTICE SYSTEM.

A. THE THIRD CIRCUIT'S HOLDING EXTENDS TO ALL MONETARY CRIMINAL PENALTIES.

Because it focuses on the dissent in *Kelly* and relies on the language of § 523(a)(7) as its reason for holding that restitution orders are debts under the Bankruptcy Code, the Third Circuit majority decision will necessarily be interpreted as a holding that not only criminal restitution but all monetary criminal fines, penalties and forfeitures are dischargeable debts in a Chapter 13 bankruptcy.[4]

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[4] The majority begins its opinion by framing the issue presented rather narrowly:

> These consolidated appeals raise an important issue, particularly for governmental agencies engaged in public assistance, of whether criminal restitution imposed as a penalty for welfare fraud constitutes a debt dischargeable under Chapter 13 of the Bankruptcy Code.

(Continued on following page)

That this was the majority's intention is clear from the language quoted on page 7, *supra*, and other language quoted below:

> As the court determined in *Kelly*, criminal restitution obligations fall within the category of "a fine, penalty or forfeiture" under §523(a)(7). Although Congress did incorporate into Chapter 13 one of the ten exceptions under section 523(a), it did not, notably, incorporate the provision relevant here, section 523(a)(7) pertaining to criminal restitution, or any facsimile thereof. . . .Congress' considered decision to adopt only one of the section 523(a) exceptions to discharge for Chapter 13 and its concomitant failure to adopt the *criminal penalties provision* or any similar exception compels the conclusion that *such penalties, including criminal restitution*, are dischargeable under Chapter 13. *Cf. Kelly*, 479 U.S. at 50, 107 S.Ct. at 361.

871 F.2d at 428 (emphasis added).

Later on the same page, the court states:

> Here, Congress has codified the *criminal penalties* exception to discharge and has chosen not to apply the exception to Chapter 13 bankruptcy.

Id. (emphasis added). On that same page, the court also states:

(Continued from previous page)

871 F.2d at 422. There is nothing in the opinion which would limit the holding to welfare fraud cases, however, and there is ample language in the opinion which indicates that it encompasses more than restitution orders.

> We thus decline to second-guess Congress and refuse to insinuate language into its legislation excepting *criminal penalties* from the definitions of "claim" or "debt."

Id. (emphasis added).

The Third Circuit majority cites Justice Marshall's dissent in the *Kelly* case, *In re Heincy*, 78 B.R. 246 (9th Cir. BAP 1987),[5] and *In re Cullens*, 77 B.R. 825 (Bkrtcy. D. Colo. 1987), in support of its holding that criminal penalties in addition to restitution are dischargeable in a Chapter 13 bankruptcy. 871 F.2d at 426. None of those cases, however, dealt with criminal penalties other than restitution. In addition, the Bankruptcy Court decision in the case at hand contains language stating that criminal fines are dischargeable in Chapter 13, even though criminal fines were not the issue before the court. In *In re Davenport*, 83 B.R. 309 (Bkrtcy. E.D. Pa. 1988), *rev'd sub nom. Davenport* v. *Com. of Pa., Dept. of Public Welfare*, 89 B.R. 428 (E.D. Pa. 1988), the court makes the startling statement that "there is no dispute that § 1328(a) discharges criminal fines and penalties," and that "fines, penalties and forfeitures, made payable to governmental units, are made dischargeable in Chapter 13." *Id.* at 315, 316. It cites no authority, however, in support of either statement.

There is, in fact, a dispute about whether criminal fines and penalties are dischargeable in a Chapter 13 bankruptcy. Most courts which have had the precise issue before them have held that criminal fines are *not* dischargeable under Chapter 13. *See In re Norman*, 95 B.R.

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[5] Since reversed by the Ninth Circuit at 858 F.2d 548 (1988).

771 (Bkrtcy. D. Colo. 1989); *In re Ferris*, 93 B.R. 729 (Bkrtcy. D. Colo. 1988); *In re Kohr*, 82 B.R. 706 (Bkrtcy. M.D. Pa. 1988); *In re Jacobson*, 35 B.R. 40 (Bkrtcy. D. Ariz. 1986).[6] There appear to be only two decisions holding that a criminal fine is dischargeable under Chapter 13 where that issue was actually before the court. Both of those cases, *In re Gilliam*, 67 B.R. 83 (Bkrtcy. M.D. Tenn. 1986), and *In re Young*, 10 B.R. 17 (Bkrtcy. S.D. Cal. 1980), were decided prior to this Court's expression of "serious doubts whether Congress intended to make criminal penalties 'debts' within the § 101(4)." *Kelly*, 479 U.S. at 50.

B. AFFIRMANCE IN THIS CASE WILL HAMPER THE FLEXIBILITY OF CRIMINAL COURT JUDGES IN FASHIONING APPROPRIATE SENTENCES.

The Commonwealth of Pennsylvania has argued in its brief that the Third Circuit's decision as to restitution orders hampers the flexibility of state (and, presumably, federal) criminal courts by greatly reducing the effectiveness of restitution as an alternative criminal sanction. Similar arguments were made in *Kelly*, and this Court recognized in that opinion the importance of permitting criminal judges to choose the "combination of imprisonment, fines and restitution most likely to further the rehabilitative goals of state criminal justice systems."

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[6] As the majority below recognizes, the majority of courts has also rejected the contention that restitution obligations are dischargeable debts under the Bankruptcy Code. 871 F.2d at 424.

Kelly 479 U.S. at 49. This Court also specifically recognized the effectiveness of restitution as a rehabilitative tool. *Id.* at 49, fn. 10. Fines, forfeitures and other monetary criminal penalties also are effective and valuable tools in meting out appropriate punishment to criminal offenders. They serve the traditional purposes of punishment – deterrence, retribution, and rehabilitation. *See United States v. Brown*, 744 F.2d 905, 909 (2nd Cir.), *cert. denied*, 469 U.S. 1089 (1984). The Third Circuit's decision hampers the usefulness of all such tools, including restitution.

In fact, because the decision below makes dischargeable all monetary criminal penalties, it leaves the courts with incarceration as the only available criminal sanction which cannot be defeated by the bankruptcy courts. Clearly, this result hampers judges in fashioning appropriate sentences in criminal cases. But it does even more. Ironically, by diminishing the value of monetary penalties as criminal sanctions, the ruling below may actually subvert the goals of the federal bankruptcy laws. The purpose of the Bankruptcy Code is to relieve persons who are being crushed by their debts and to provide them a "fresh start" in life. *See, Perez v. Campbell*, 402 U.S. 637 (1971). If the States are forced to jail criminals because they could nullify monetary sanctions simply by filing for bankruptcy, those offenders would have less opportunity to obtain the "fresh start" that the Code is intended to provide.

C. THE EFFECTS ON THE CRIMINAL JUSTICE SYSTEM WILL NOT BE LIMITED TO HAMPERING THE CRIMINAL COURTS IN SENTENCING.

It is quite likely that criminal offenders will file for bankruptcy if they can thereby discharge criminal penalties. The impact on the criminal justice system, and the public confidence in that system, is quite predictable if such filings become commonplace. Criminal courts will be forced to consider incarceration as the only effective penalty, even for lesser offenses, and prisons will become even more crowded. Indeed, overcrowded prisons may prevent increased use of incarceration. The public will lose even more confidence in the ability of the criminal justice system to punish criminals effectively if incarceration cannot be imposed and criminal fines and restitution can be so easily circumvented.[7]

The prospect that criminals will seek refuge in Chapter 13 bankruptcies to avoid criminal penalties is quite real. Under our system of criminal justice, an attorney has

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[7] There may be some question about the ease of discharging fines and other criminal penalties in a Chapter 13 case. In *In re Gilliam* and *In re Young*, the two cases which held criminal fines dischargeable under Chapter 13, the debtors' plans provided for 100% payment of the fines. That is not the usual case, however. As Judge Woodside stated in *In re Kohr*: "The majority of Chapter 13 cases are filed to save the home. Most provide very small payments to unsecured creditors. I have approved plans with no payments going to unsecured creditors. The strong principals enunciated in the *Kelly* case are totally inconsistent with the discharge of criminal penalties in a Chapter 13 case." *In re Kohr*, 82 B.R. at 712.

an ethical obligation to provide his client with competent legal counsel. Arguably, criminal lawyers will be bound to advise their clients of the availability of relief from criminal sanctions in the bankruptcy courts if this Court affirms the Third Circuit's decision. A lawyer might even be accused of malpractice if he did not put his client into Chapter 13 bankruptcy upon the imposition of a large fine or restitution order by a criminal court.

As a result of such a situation, Chapter 13 bankruptcy filings could become the norm for convicted criminals who are the subject of a fine or restitution order. The bankruptcy courts would become an adjunct to the criminal justice system: The last stop in a progression from arrest, trial, conviction, sentencing, bankruptcy filing and then discharge. There is every reason to believe that resourceful attorneys would use the system in just that way, creating a "revolving door" by which criminals could rid themselves of criminal penalties. *See In re Pellegrino*, 42 B.R. 129, 138 (Bkrtcy. D. Conn. 1984). That this result is contrary to Congress' intent that bankruptcy not become a haven for criminals is self-evident. *Id.* at 134. This Court should not presume that Congress intended such an absurd result. *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564 (1982).

D. THE EFFECTS WILL BE FELT BY PROSECUTORS AND OTHER STATE OFFICIALS ATTEMPTING TO ENFORCE CRIMINAL SENTENCES.

If criminal penalties are held to be dischargeable debts, prosecutors likely will have to become bankruptcy practitioners, attempting to convince bankruptcy courts

that a debtor's Chapter 13 plan should not be confirmed or that criminal penalties deserve special treatment in the plan. This is unlike the situation in *Kelly*, where prosecutors arguably could have objected to discharge for many types of criminal sentences because a Chapter 7 bankruptcy was involved. In Chapter 13 cases, state officials presumably will be limited to objections to plan confirmation or objections to the treatment of the criminal penalty under the plan.[8] If criminal penalties are not excepted from discharge in Chapter 13, there is very little else that is excepted upon which an objection could be fashioned. For this reason, once again, the policy reasons for construing criminal penalties as not within the definition of "debt" are even stronger in this case than in *Kelly*.

IV. THE EXCEPTION TO THE AUTOMATIC STAY IN § 362(b)(1) CONFLICTS WITH A DECISION THAT CRIMINAL PENALTIES ARE DISCHARGEABLE IN CHAPTER 13.

The exception to the automatic stay in § 362(b)(1) creates yet another direct conflict between the criminal

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[8] Filing such objections and following bankruptcy proceedings would create uncertainties and impose undue burdens on state officials, as noted by this Court in *Kelly*. 479 U.S. at 48. This is especially true where bankruptcy proceedings may be filed in jurisdictions far from the state where the criminal sentence was imposed. If a convicted criminal has moved to another state and filed for bankruptcy in that state, the ability of officials from the state of conviction to monitor and have an effect on the bankruptcy proceeding is very limited. Moreover, bankruptcy practice is a specialty requiring a good deal of expertise. Placing the burden of enforcing criminal sentences in bankruptcy courts on prosecutors and criminal justice personnel would be both unduly burdensome and inappropriate.

justice system and the bankruptcy courts if this Court affirms the court below. The conflict arises because of the authority of prosecutors or other state officials, acting pursuant to the exception to the automatic stay, to institute collection measures to enforce fines and criminal penalties outside of a Chapter 13 plan, either by filing an adversary proceeding seeking to have the stay lifted, or by simply proceeding with collection efforts with the understanding that the stay does not apply.

The exception to the automatic stay in § 362(b)(1) is for "the commencement or continuation of a criminal action or proceeding against the debtor." Although this Court has not expressly ruled on the question, at least one circuit has held that this provision means that the automatic stay provisions of § 362 do not apply to attempts to collect a criminal fine. *United States v. Troxler Hosiery Co., Inc.*, 41 B.R. 457 (D.C. N.C. 1984), *aff'd, per curiam*, 796 F.2d 723 (4th Cir. 1986), *cert. denied*, 480 U.S. 930 (1987). *See also In re Wise*, 25 B.R. 440 (Bkrtcy. E.D. Va. 1982); *In re Newton*, 15 B.R. 708 (Bkrtcy. N.D. Ga. 1981); *In re Button*, 8 B.R. 692 (Bkrtcy. W.D. N.Y. 1981). *Cf. In re Cancel*, 85 B.R. 677 (N.D. N.Y. 1988).

It would be completely inconsistent for Congress to have provided that fines and penalties are dischargeable debts in a Chapter 13 bankruptcy while also providing that efforts to collect such penalties during the period prior to discharge are not stayed. It would make little sense if the government could collect, outside of a Chapter 13 plan, a debt which is dischargeable upon completion of the plan. Such collection, unless somehow allowed for in the plan, would likely limit the debtor's ability to complete the plan. In fact, a prosecutor armed with an

exemption from the stay could presumably have the individual incarcerated, thereby eliminating any possibility that he could complete his plan. At a minimum, the prosecutor certainly would have an incentive to work quickly to collect penalties before completion of the plan, since there could be no collection after discharge.

Accordingly, the exception to the stay provided in § 362(b)(1) is yet another reason for this Court not to interpret criminal penalties as dischargeable debts. Congress cannot have intended to create such an inconsistency, and it would be inappropriate for this Court to hold that it did where there is an alternative interpretation available which avoids that result while remaining consistent with legislative purposes. *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982).

CONCLUSION

The statutory interpretation by the majority below forces the criminal courts and bankruptcy courts into conflict, contravenes basic concepts of federalism, and threatens the effectiveness of the criminal justice system at both the state and federal levels. An alternative interpretation which has none of those faults and which is consistent with legislative purposes is available *See Griffin, supra*, 458 U.S. at 575. It is not only available, it has been described by this Court in *Kelly v. Robinson*. There is every reason to adopt that alternative interpretation in this case.

The judgment of the Court of Appeals should be reversed.

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